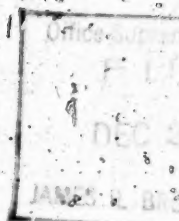


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**In the Supreme Court**  
OF THE  
**United States**

OCTOBER TERM, 1958

**No. 269**

MARION S. FELTER, on behalf of him-  
self and others similarly situated,

*Petitioner,*

VS.

SOUTHERN PACIFIC COMPANY, et al.,

*Respondents.*

On Writ of Certiorari to the United States Court of Appeals  
for the Ninth Circuit.

**RESPONDENTS' BRIEF.**

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OPINIONS BELOW.

The opinion of the United States District Court, Northern District of California, Southern Division, entered on the 24th day of May, 1957, is reported at 155 F. Supp. 315, and reprinted in the record (R. 65). The opinion of the Court of Appeals affirming

the District Court is reported at 256 F. 2d 429, and reprinted in the Record (R. 85).

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### **JURISDICTION.**

The judgment of the Court of Appeals was entered on May 12, 1958. The petition for writ of certiorari was filed on August 11, 1958, and was granted on October 13, 1958. The jurisdiction of this court rests on 28 U.S.C. 1254 (1).

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### **STATUTES INVOLVED.**

Section 2, Fourth, and Eleventh of the Railway Labor Act, Title 45 U.S.C., Section 152 (Fourth and Eleventh).

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### **STATEMENT.**

Pursuant to the provisions of the Railway Labor Act, as amended (45 U.S.C. 152, Eleventh), the Southern Pacific Company and the Brotherhood of Railroad Trainmen entered into a dues deduction agreement (R. 74).

Petitioner is an employee of the respondent Southern Pacific Company (R. 4). He was formerly a member of the respondent Brotherhood of Railroad Trainmen, hereinafter referred to as "B.R.T." (R. 6).

On February 1, 1956, petitioner and others similarly situated executed wage deduction authorizations in the form prescribed by the foregoing dues deduction agreement (R. 6, 35, 62).

This form provided:

"This authorization may be revoked by the undersigned in writing, after the expiration of one year, or upon the termination date of the aforesaid deduction agreement, or upon the termination of the rules and working conditions agreement, whichever occurs sooner."

This conformed with Section 2, Eleventh, of the Railway Labor Act (45 U.S.C. Section 152, Eleventh).

More than a year after the execution of their assignments, petitioner and others resigned their membership in B.R.T. (R. 17, 23, 36). At the time of their resignations, petitioner and other employees similarly situated attempted to revoke their wage assignments by a procedure other than that contained in the agreement of August 1, 1955. Neither petitioner nor any of the other employees similarly situated submitted their written revocations on forms "reproduced and furnished" by the B.R.T. (R. 25). They did not personally submit written revocations to the respondent Southern Pacific Company (R. 20). They did not notify the Southern Pacific Company that they were no longer members of the B.R.T. (R. 62).

The written forms sent to the B.R.T. were similar to the form of revocation attached to the dues deduction agreement (R. 24, 67, 79, 80).

The District Court was of the opinion that to effectively administer a dues deduction agreement "some sort of orderly procedure" was required. Such a procedure was "no burden" on the employee and was only a "reasonable compliance" with the Railway Labor Act (R. 69).

The Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court (256 F. 2d 429, 430) (R. 87).

#### QUESTION INVOLVED.

Whether the requirement in the dues deduction agreement (R. 74) that authorizations by the member employee for deductions from his wages for payment of dues, assessments and insurance premium, and the revocation of such authorizations, must be on forms "reproduced and furnished" by the Brotherhood of Railroad Trainmen, was invalid as a restriction on the employee member's right to change unions or revoke his dues deduction authorization.



### ARGUMENT.

NEITHER THE B.R.T. NOR THE SOUTHERN PACIFIC COMPANY, BY THE TERMS OF THE DUES DEDUCTION AGREEMENT OF AUGUST 1, 1955, IN ANY WAY RESTRICTED THE RIGHT OF THE PETITIONER AND OTHERS SIMILARLY SITUATED TO EITHER REVOKE HIS WAGE DEDUCTION AUTHORIZATION OR TO CHANGE HIS UNION, IN VIOLATION OF THE PROVISIONS OF THE RAILWAY LABOR ACT AS AMENDED.

- A. The wage deduction agreement was valid under the provisions of the Railway Labor Act as amended, and petitioner was bound by its provisions.

The Railway Labor Act specifically provides for dues deduction agreements between a carrier and a labor organization duly designated to represent employees.

“Eleventh. Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

“(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other



than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

“(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.”

Agreements in respect to dues deductions are collective bargaining agreements.

*N.L.R.B. v. Reed & Prince Mfg. Co.*, 1 Cir., 1953, 205 F. 2d 131, 136.

Such agreements are binding upon the members of that bargaining organization (here the B.R.T.).

“Other parts of the Act expressly provide for the complete independence of employees in the matter of self-organization, and the right of employees to organize and bargain collectively through representatives of their own choosing,

and conferred upon the majority of any class of employees the right to determine who should be the representatives thereof. Section 2 (Fourth) of the Act of May 20, 1926, as amended by the Act of June 21, 1934, 45 U.S.C.A. Secs. 151a and 152, Fourth. There can be no doubt that the action of a majority of employees in the selection of representatives *and the action of the representatives themselves so selected were intended to be binding upon the whole class of employees.*"

*Atlantic Coast Line R. Co. v. Pope*, 119 F. 2d 39 at 43.

The petitioner was thoroughly familiar with the provisions of the dues deduction agreement, for his wage assignment was made "in the form and in the manner provided in a (the) collective bargaining agreement negotiated by the defendant Southern Pacific Company and the Brotherhood of Railroad Trainmen, a voluntary association, acting as collective bargaining agent for the plaintiff on or about August 8, 1955" (R. 11). In addition, he was furnished a copy of the agreement and it was explained to him when he first signed the authorization for dues deduction (R. 32).

- B. The agreement placed no restriction on the right of petitioner to revoke his wage deduction authorization, or to change unions.

It is petitioner's contention that the requirement in the agreement in question that revocations of authorizations for dues deductions by the Southern Pacific Company, requiring such revocations to be on forms "reproduced and furnished" by the B.R.T. in-

fringed upon the rights of the petitioner as guaranteed by the Railway Labor Act (Brief of Petitioner, 4, 5). This contention is without merit.

These rights are presented as (1) petitioner's right to revoke his wage deduction assignment, and (2) his right to change unions.

The Railway Labor Act provides only that authorizations and revocations of dues deductions shall be in writing (45 U.S.C. 152, Eleventh (b)). There is nothing in the Act stating the form to be followed in each instance, or how the employer is to be notified or when, with relation to pay days. In consequence, there must be some sort of an agreement whereby the employee can be properly credited by his union for dues, etc. paid, and responsibility placed for proper notifications, so the employee can be protected.

The agreement of August 1, 1955, set up such an administrative procedure. It provided that:

(1) The Southern Pacific Company shall deduct dues, initiation fees, assessments and insurance from wages, upon the written authorization of a member (member of B.R.T.) in the form agreed upon (R. 74).

(2) Revocation shall be in the form agreed upon (R. 74, 75).

(3) Both the authorization form and the revocation form are to be reproduced and furnished by the Organization (B.R.T.) (R. 75).

(4) The Organization (B.R.T.) assumed full responsibility for the procurement and execu-

tion of the forms and for the delivery of the forms to the Southern Pacific Company (R. 75).

(5) The treasurer of the local lodge to which the employee belongs is to furnish the company with a certified list showing deductions and revocations, and this list is to be furnished to the Division Superintendent on or before the 5th day of each month in which the deduction or termination thereof is to become effective (R. 75).

(6) Where an employee desires to terminate his dues deduction authorization the list should so show and be accompanied by a revocation of assignment form (R. 75, 76).

Where in this procedure is there any restriction on the right of the employee to either revoke his authorization for dues deduction or his right to change unions? If there was no "orderly procedure" set up how would the employee know when to forward either his authorization or revocation to the company? If each employee acted on his own, as petitioner contends, it is obvious that only confusion would result.

The only practical way to assure the employee that his wishes will be carried out, and that he will not be injured by some spurious revocation or authorization, is to follow a regular procedure through his bargaining agent. That procedure was properly set up in the agreement (R. 74).

Requiring a revocation to be on a form "reproduced and furnished" by the B.R.T. was no more a restriction on petitioner's right to revoke his authori-

zation to deduct dues or his right to change unions than requiring that the forms be sent to the Company on or before the 5th of the month, or that they be sent through his bargaining representative. As a matter of fact, petitioner raises no objection to any of the other requirements of the agreement.

The requiring of a revocation to be on a form "reproduced and furnished" by the B.R.T. is actually a protection to the member employee.

C. Requiring the employee to submit his revocation of a wage assignment authorization on a form "reproduced and furnished" by the B.R.T. protects the rights of the member employees.

The requirement that revocation forms be "reproduced and furnished" by the B.R.T. serves a desirable purpose. If any similar printed form to that required under the agreement was acceptable, either a spurious authorization to deduct dues, or to revoke an authorization could cause loss of rights and insurance benefits. This requirement acts as a safety valve or check to prevent any such occurrence.

This requirement in no way restricts the employee member's right to either authorize a dues deduction or to revoke such an authorization; but safeguards that right against any outsider or troublemaker who might attempt to file a spurious form to create dissatisfaction or confusion.

The proper forms were readily available to the members of the B.R.T. either by personal request or by mail (R. 30). It is just as easy for the members to obtain the proper forms from the B.R.T. as it is



for them to procure the forms from an outside source. In fact, the petitioner here was forwarded the proper form by return mail in reply to his letter of resignation enclosing the spurious form. This without his asking (R. 25).

If this requirement is held invalid it will remove the lock from the door, and leave the house wide open for ransack. Sometimes, as a practical matter, an employee needs protection against himself as well as from outside undue influence, and the procedure set up in the agreement in question affords that protection by requiring both the authorization and revocation of dues deduction to be made in writing on the proper form obtainable from his own representative.

**D. Dues deduction agreements are properly made between the carrier and the labor organization representing the employee.**

Petitioner's argument to the effect that the carrier and union have no right to enter into an agreement setting up the administrative procedure by which a member employee can authorize or revoke dues deductions is wholly fallacious.

The Railway Labor Act specifically grants that right to the carrier and union, and avoids any right in the employee other than through his bargaining agent or representative.

"Eleventh. Notwithstanding any other provision of this chapter \* \* \* any carrier \* \* \* and a labor organization duly designated and authorized to represent employees \* \* \* shall be permitted

\* \* \*



(b) to make agreements providing for the deduction by such carrier \* \* \* from the wages of its employees \* \* \* and payment to the organization representing \* \* \* the class of such employees, of any periodic dues \* \* \*."

(45 U.S.C. 152, Eleventh (b).)

The statute thus clearly gives the right to the carrier and the labor organization to enter into an agreement concerning dues deduction, and leaves the administrative procedure to be determined by the carrier and the union in such an agreement. The statute prescribes only that the individual employee shall give his consent or revoke his consent to dues deductions in writing.

(45 U.S.C. 152, Eleventh(b).)

As is contemplated by the above statute provisions, the B.R.T. and the Southern Pacific Company entered into the agreement in question. This agreement, as pointed out above, prescribed that, "Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the organization (union) without cost to the company. The organization shall assume full responsibility for the procurement and execution of the forms by employees and for delivery of such forms to the company."

These provisions merely set up a procedure by which the deduction of dues could be handled in a safe and orderly manner. Certainly it was never contemplated that the individual employee could just write an authorization or revocation on a piece of

paper and send it at any time to the employer and it would be acted upon. That is the substance of petitioner's argument, and it is wholly unrealistic and unworkable, for it would be impossible to keep accurate records if such authorizations and revocations were sent to the company at random.

There would always be disputes as to receipt of such notices by the company when they were sent, and when they were to be effective. The only reasonable conclusion is that the procedure was to be established by agreement such as the one here involved. If mistakes were made under such circumstances, it would be difficult to fix responsibility. Under the agreement the B.R.T. assumes full responsibility for obtaining and delivering written authorizations and revocations and, in assuming that responsibility, it has a right to be protected by requiring, as the agreement permitted by statute does, that a definite procedure be strictly followed.

It seems explicit in the wording of the statute that the employee is to furnish the employer with written authorization and revocation of dues deduction through the labor organization (B.R.T.) representing his class of employment, and not individually, as contended by petitioner.

If, as contended by the petitioner, the authorization and revocation of dues deductions was up to the individual employee, how would the B.R.T. know where to go to collect unpaid dues, assessments and insurance premiums, to protect the employee from the possible loss of his rights for non-payment of dues and

premiums? What would prevent an unscrupulous person from sending the company a spurious authorization or revocation of dues deduction?

The union would not be able to protect the rights of its employee members under such circumstances, for according to petitioner's argument the deduction of dues is a matter between the company and the individual employee, and the company would be under no obligation to notify the union of any change either as to authorization to deduct dues or to revoke a previous authorization.

The only reasonable interpretation of the statute in question is that it was intended to give the individual employee the right to authorize the deduction of dues, assessments, etc., from his wages or to revoke such authorization; providing, that such authorization or revocation is in writing. However, the procedure for administering the deduction of dues, etc., from the wages of the employees is not set out in the statute and is therefore a matter for agreement between the employer carrier and the labor organization representing the class of employees involved. This interpretation enables the employer to be protected, the union involved to be protected, and the employee to be protected. Any other interpretation such as that urged by the petitioner would protect no one, and would lead to constant controversy and confusion.

The point of what was said by the proposers of the amendments to the Railway Labor Act allowing dues deductions or check-off agreements between a carrier and a union, was that the carrier and union could not

make an agreement for check-off of dues blanketing in all members of the union, but that each member had a choice and could for himself determine whether or not he wanted his dues deducted from his wages. This choice was to be made in writing. The only purpose then, of the agreement was, as pointed out above, to set up an orderly administrative procedure so that the enormous amount of bookkeeping involved could be accomplished with a minimum of work, and so that records could be kept straight, responsibility fixed, and all parties thereby protected.

**E. The right of the petitioner to change unions was never restricted in any manner.**

By letter dated March 30, 1957, the petitioner resigned from the B.R.T. (R. 7, 23). This resignation was accepted as of the date of receipt of the letter (R. 36). Also, this letter informed the B.R.T. that he had joined the O.R.C. & B. (Order of Railroad Conductors & Brakemen). Here was a complete change of unions with no restriction or interference by the B.R.T.

Had the petitioner notified the Southern Pacific Company of this change of unions, no more dues deductions would have been made regardless of a revocation, for payment of dues deducted from an employee's wages to any other union than the one in which the employee is a member is forbidden by the Railway Labor Act.

and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues,

initiation fees, or assessments payable to any labor organization other than that in which he holds membership."

(45 U.S.C. 152 Eleventh (c).)

There might be a question involved as to the right of the B.R.T. to retain dues paid after the resignation, but the resignation and joining of another union was accomplished without restriction. The petitioner cannot now seriously contend that his resignation or affiliation with another union was delayed or in any way interfered with, for the foregoing record clearly established an uninterference with resignation and affiliation.

It is pure fiction to state, as petitioner does, that failure to follow the prescribed procedure to revoke his dues authorization would require him to belong to two unions; because, by resignation from the B.R.T. and his becoming a member of another union, the Southern Pacific Company, as a matter of law, could no longer pay over deductions to any union but the one in which he held membership, and that was no longer the respondent B.R.T.

#### CONCLUSION.

The B.R.T. urges that there being no procedure set up in the Railway Labor Act for administering dues deductions that a Dues Deduction Agreement may provide a reasonable and orderly procedure to govern its operation. Both the Dues Deduction Agreement

and the facts of this case show that the method of revocation is reasonable, and protects the employee, the employer, and the union, and places no restriction on the employee's right to change unions:

Dated, Oakland, California,

December 22, 1958.

Respectfully submitted,

: CLIFTON HILDEBRAND,

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D. W. BROBST,

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